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10/589,230

12/05/2006

Paul David Ruddick

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06/23/2009

CURATOLO SIDOTI CO., LPA

24500 CENTER RIDGE ROAD, SUITE 280

CLEVELAND, OH 44145

EXAMINER

ESTRADA, ANGEL R

ART UNIT

PAPER NUMBER

2831

MAIL DATE

DELIVERY MODE

06/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/589,230 | Applicant(s) RUDDICK, PAUL DAVID | |
| | Examiner Angel R. Estrada | Art Unit 2831 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9 and 10 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/8/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed December 8, 2006 has been considered by the Examiner.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas (US 4,629,826).

Regarding claim 1, Thomas discloses a conduit (see figure 2) having a substantially semi-circular outer cross-section (see figure 2) comprising a base portion (22) and a lid portion (20), the lid portion (20) being attached to the base portion (22) by a hinge (24) and having a clip (see figure 2) on the opposite side, wherein the hinge (24) is located at an angular elevation from the base of: between 10° and 35° (see figure 2) , the base portion (22) having a clip socket (see figure 2) for retaining the clip, wherein the clip socket (see figure 2) comprises an outer wall (26), which forms part of the semi-circular outer cross-section (see figure 2), and an inner wall (see figure 2), between which is defined a channel for the clip (see figure 2), the height of the inner wall (see figure 2) above the bottom of the base portion (22) being substantially the

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same as the height of the hinge (24) above the bottom of the base portion (see figure 2).

Regarding claim 2, Thomas discloses a conduit (see figure 2) wherein on a cross-section of the conduit a line between the hinge and the top of the inner wall is within 5° of parallel with the base of the conduit (see figure 2).

Regarding claim 10, Thomas discloses a conduit (see figure 2), wherein a buffer ledge can be provided in the base portion on the bottom wall (see figure 2) and on or adjacent the wall to which the hinge is attached.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas (US 4,629,826).

Regarding claim 3, Thomas discloses the claimed invention except for the hinge being located at an angular elevation from the base of between 20° and 25°. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hinge located at an angular elevation from the base of between 20° and 25°, since it has been held that rearranging parts, of an invention involves only routine skill in the art. In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

Regarding claim 4, Thomas discloses the claimed invention except for the outer wall of the clip socket is shorter than the inner wall. It would have been an obvious matter of design choice to make the clip socket shorter than the inner wall, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Regarding claim 5, Thomas discloses the claimed invention except for the outer wall has an angular elevation from the base which is at least 5° more than that of the inner wall. It would have been an obvious matter of design choice to make the angular elevation from the base which is at least 5° more than that of the inner wall, since such a modification would have involved a mere change in the shape of a component. Where the instant specification and evidence of record fail to attribute any significance (novel or unexpected results) to a particular shape, a change of shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

4. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas (US 4,629,826) in view of Belcher (US 5,274,194)

Regarding claim 6, Thomas discloses the claimed invention except for the outer wall of the clip socket has a retaining lip thereon, which engages with a corresponding retaining groove in the clip. Belcher teaches a conduit (10) having a clip socket (see figure 1) and a lid portion (14) having a clip (see figure 1); wherein the outer wall of a

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clip socket (see figure 5) has a retaining lip (42) thereon, which engages with a corresponding retaining groove in the clip (see figure 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make Thomas's conduit with the outer wall of the clip socket having a retaining lip thereon, which engages with a corresponding retaining groove in the clip as taught by Belcher to provide means for firmly securing the lid portion to the base portion.

Regarding claim 7, the modified Thomas discloses the conduit (see figure 2) wherein the portion of the clip which extends beyond the retaining groove into the channel (as taught by Belcher) between the inner and outer walls of the clip socket extends a short distance beyond the retaining groove (as taught by Belcher).

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas (US 4,629,826) in view of Sato (US 6,545,217).

Regarding claim 9, Thomas discloses the claimed invention except for the conduit comprising a sealing gasket being provided on the clip or the clip socket. Sato teaches an apparatus having base portion (2) having a clip socket (see figure 3) and a lid (3) having a clip (see figure 3), and a sealing gasket (14) being provided on the clip socket (see figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a sealing gasket on the clip or the clip socket as taught by Sato to provide means for improving the conduit sealing capabilities.

Allowable Subject Matter

6. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: The primary reason for the indication of the allowability of claim is:

Regarding claim 8, the prior art does not teach or fairly suggest in combination with the other claimed limitations a conduit, wherein the short distance is an angular extension of no more than 10° from the centre of the retaining groove to the end of the clip.

This limitation is found in claim 8, and is neither disclosed nor taught by the prior art of record, alone or in combination.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pawson et al (US 6,323,421), Federspiel et al (US 6,972,367), Santucci et al (US 5,235,136), Decore et al (US 6,513,289), Shira (US 3,786,1711), Fouss et al (US 4,245,924), VandeiVelde et al (US 6,437,243), Sprenger (US 4,530,865) and Ruddick (US D541,143 and D539,752) disclose a conduit.

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8. Any inquiry concerning this communication should be directed to Angel R. Estrada at telephone number (571) 272-1973. The Examiner can normally be reached on Monday-Friday (8:30 -5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) OR 571-272-1000.

June 5, 2009

/Angel R. Estrada/
Primary Examiner, Art Unit 2831